

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

SANMINA CORPORATION,

Plaintiff,

-against-

DIALIGHT PLC,

Defendant.

19 CV 11710

**COMPLAINT**

Jury Trial Demanded

Plaintiff Sanmina Corporation (“Sanmina”) alleges as follows:

**Jurisdiction and Venue**

1. Sanmina is a Delaware corporation with its principal place of business in San Jose, California.
2. Sanmina is informed and believes, and thereon alleges, that Defendant Dialight plc (“Dialight”) is a public limited company created and registered under the laws of England and Wales with its principal place of business in Suffolk, England. Dialight is thus a citizen or subject of a foreign state within the meaning of 28 U.S.C. § 1332(a)(2).
3. The amount in controversy exceeds \$75,000, exclusive of interest and costs.
4. Personal jurisdiction and venue lies in this Court because Section 25.10 of the parties’ contract, known as the Manufacturing Services Agreement (“MSA”), contains a mandatory forum selection clause requiring any action arising out of the MSA to be brought in New York, New York. The MSA also requires the application of New York law to this dispute.
5. All requirements under the MSA prior to commencing litigation concerning a dispute thereunder have been satisfied.

**Summary of the Case**

6. On March 8, 2016, Sanmina and Dialight entered into the MSA under which Sanmina provided contract manufacturing services to Dialight for the production of LED lighting products and components. On September 27, 2018, Sanmina received from Dialight a written notice of termination of the MSA without cause. As of the date of the notice of termination, Dialight owed Sanmina approximately \$5 million for unpaid invoices, and was liable to Sanmina for an additional \$10 million in unconsumed parts and materials that Sanmina purchased in accordance with the MSA. Sanmina holds a reserve account in the approximate sum of \$5 million, which has been applied against Dialight's liability for unconsumed parts and materials. By this action, Sanmina seeks to recover from Dialight the amounts due and unpaid under the MSA, plus interest at the contractual rate of 1% per month and reimbursement of all costs, including legal fees, associated with collecting the unpaid amounts.

**Statement of Facts**

7. Sanmina is a contract manufacturer. That means that customers retain Sanmina to build finished and semi-finished goods in accordance with plans and specifications that the customer provides.

8. In order for Sanmina to fill Dialight's orders, Sanmina needs to order parts and materials based on Dialight's forecasts of its expected future orders, and in accordance with the provisions of the MSA. Pursuant to the terms of the MSA, and in particular Section 8 thereof, Dialight is required to purchase from Sanmina all parts and materials that become excess or obsolete (as defined in the MSA) after purchase by Sanmina when such parts are not consumed in Sanmina's production of finished goods within the timeframes specified in the MSA. These parts and materials are referred to as "E&O."

9. Pursuant to the MSA, Dialight's interim E&O liabilities were negotiated on a quarterly basis. The negotiations generally produced a compromise under which Sanmina would agree to charge Dialight a portion of Dialight's E&O liability, with the balance to be carried over to future reconciliations. Thereafter, within eight business days of the parties' compromise agreement, Dialight was required to pay Sanmina the agreed E&O amount to be held in an "Offset Inventory Reserve Account" (hereafter, the "Reserve Account"). The Reserve Account did not represent the entirety of Dialight's E&O liability, but only that portion of Dialight's E&O liability on which Dialight was willing to agree at each quarterly reconciliation.

10. Sanmina was permitted to debit the Reserve Account to the extent that funds held in the Reserve Account were attributable either to (i) excess inventory that was more than six months old or (ii) materials that otherwise had become obsolete.

11. On September 27, 2018, Dialight issued its written notice of termination of the MSA without cause. Dialight's termination rendered all funds in the Reserve Account effectively attributable to obsolete materials (and thus subject to immediate debit by Sanmina), and all materials Sanmina purchased on the basis of Dialight's forecasts became obsolete under Section 8.2 of the MSA.

12. Following termination, Dialight informed Sanmina that it would not make any payment to Sanmina on account of its E&O liabilities, and in fact baselessly demanded a refund of the Reserve Account, thus anticipatorily repudiating Dialight's E&O obligations under the MSA and obviating the need for Sanmina to issue any further E&O invoices.

13. Sanmina holds \$9,862,801.39 in E&O materials, all of which became obsolete on Dialight's termination of the MSA. Given the \$5,304,730.42 already received from Dialight in connection with its E&O obligations, Dialight remains liable to Sanmina for payment of

\$4,558,070.97 in respect of the E&O materials Sanmina purchased prior to Dialight's termination of the MSA.

14. Dialight also has refused to pay thousands of invoices—for finished goods delivered by Sanmina and accepted by Dialight, and various materials, overhead, tooling, repair, and service charges for which Dialight is liable under the MSA—leaving a balance now due and owing by Dialight to Sanmina, in addition to its E&O liabilities, in the sum of \$5,329,881.32 (referred to as accounts receivable or “A/R”).

15. All A/R invoices are due within thirty days of issuance; all invoices for obsolete materials are due within twenty business days of issuance. All invoices bear interest at 1% per month from and after their due dates.

16. As of the date of the filing of this Complaint, Dialight owes Sanmina the sum of \$5,329,881.32 in unpaid A/R, plus interest commencing 30 days from the issuance of each invoice at the rate of 1% per month.

17. As of the date of filing this Complaint, Dialight also owes Sanmina the sum of \$4,558,070.97 in E&O charges, which sum represents Dialight's net liability after applying the funds in the Reserve Account. This obligation bears interest at the rate of 1% per month commencing 20 business days following Dialight's repudiation of its E&O obligations under the MSA.

18. Section 25.11 of the MSA provides that the prevailing party in this action is entitled to recover its costs and expenses, including without limitation its reasonable attorneys' fees.

19. On the basis of the foregoing facts, Sanmina alleges the following causes of action against Dialight.

**COUNT ONE**  
**FOR BREACH OF CONTRACT**

**(CLAIM FOR A/R)**

20. Sanmina incorporates herein, as if set forth in full, paragraphs 1 through 19, inclusive.

21. The MSA constitutes a valid and enforceable contract.

22. Sanmina has fully complied with all of its obligations under the MSA, except those obligations that have been excused or that Dialight has prevented Sanmina from fulfilling.

23. Pursuant to, *inter alia*, Sections 3.6 and 11.1 of the MSA, Dialight has breached the MSA by failing to pay, as and when due, the sum of \$5,329,881.32, representing invoices duly issued by Sanmina for finished and semi-finished goods ordered by, delivered to, and accepted by, Dialight, as well as for materials and various overhead, tooling, repair, and service charges for which Dialight is liable under the MSA.

24. Each of the invoices comprising the amount now past due bears interest at the rate of 1% per month commencing 30 days after issuance of said invoice.

25. As a result of Dialight's failure to pay, Sanmina has suffered damages in the sum of \$5,329,881.32, plus interest thereon, which interest continues to accrue at the rate of 1% per month.

26. Sanmina also is entitled to recover its attorneys' fees and costs of suit in accordance with the terms of the MSA.

**COUNT TWO**  
**FOR BREACH OF CONTRACT**  
**(CLAIM FOR E&O LIABILITY)**

27. Sanmina incorporates herein, as if set forth in full, paragraphs 1 through 19, inclusive.

28. The MSA constitutes a valid and enforceable contract.

29. Sanmina has fully complied with all of its obligations under the MSA, except those obligations that have been excused or that Dialight has prevented Sanmina from fulfilling.

30. In addition to the breach alleged in Count One, Dialight has breached the MSA by anticipatory repudiation, advising Sanmina that it will not pay the sum of \$4,558,070.97, or any other sum, representing E&O charges due and payable pursuant to Section 8 of the MSA. This amount represents the net amount due and owing after considering the funds in the Reserve Account.

31. Dialight's E&O liability bears interest at the rate of 1% per month commencing 20 business days after Dialight's repudiation of its E&O obligations.

32. As a result of Dialight's failure to pay, Sanmina has suffered damages in the sum of \$4,558,070.97, plus interest thereon, which continues to accrue at the rate of 1% per month.

33. Sanmina also is entitled to recover its attorneys' fees and costs of suit in accordance with the terms of the MSA.

WHEREFORE, Sanmina prays for judgment against Dialight as follows:

1. On Count One, for the principal sum of \$5,329,881.32, plus interest thereon at the rate of 1% per month commencing 30 days after the issuance of each invoice comprising this sum.

2. On Count Two, for the principal sum of \$4,558,070.97, plus interest thereon at the rate of 1% per month commencing 20 business days following the date of Dialight's repudiation of its E&O obligations under the MSA.
3. On both causes of action, for Sanmina's costs incurred in collecting these debts, including, without limitation, all reasonable attorneys' fees incurred.
4. On both causes of action, for such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Sanmina hereby demands a trial by jury as to all claims alleged herein.

Dated: New York, New York  
December 20, 2019

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